

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into and effective on the last date of execution by the parties to this agreement and full approval by the Los Angeles County Board of Supervisors (the "Effective Date"), by and between THE COUNTY OF LOS ANGELES ("LA County") and American Safety Casualty Insurance Company, an Oklahoma corporation ("ASCIC").

RECITALS

WHEREAS, on or about May 24, 2011, ASCIC executed and issued a performance bond and payment bond, each designated as ASCIC Bond No. 20-SBA-526235 and each in the penal sum of \$1,141,943.43 ("the RLA bonds"), in connection with a construction project entailing the installation of burners on three of four boilers at the LA County facility known as the Rancho Los Amigos Medical Center in Downey, California ("the RLA Project") for which LA County awarded a contract to SR&B Boilers, Inc. dba Heat Transfer Solutions ("SR&B Boilers");

WHEREAS, on or about May 24, 2011, ASCIC executed and issued a performance bond and payment bond, each designated as ASCIC Bond No. 20-SBA-526234 and each in the penal sum of \$565,337.00 ("the Olive View bonds"), in connection with a construction project at the LA County facility known as the Olive View – UCLA Medical Center in Sylmar, California ("the Olive View Project") for which LA County awarded a contract to SR&B Boilers;

WHEREAS, LA County and ASCIC previously executed a contract ("the Takeover Agreement") with an effective date of May 14, 2013 in connection with the performance bond issued by ASCIC in connection with the RLA Project and ASCIC's agreement to take over the completion of that project pursuant to the terms of the Takeover Agreement and the performance bond issued by ASCIC in connection with the RLA Project;

WHEREAS, LA County is currently in litigation with SR&B Boilers in connection with the RLA Project, the Olive View Project, and a third construction project known as the Pitchess-Cogen Project (relating to a construction project awarded by LA County to SR&B Boilers in connection with the LA County facility known as the Pitchess Cogen cogeneration plant located in Saugus, California) ("the Pitchess Cogen Project") in the action entitled *SR&B Boilers, Inc. v. County of Los Angeles*, Los Angeles County Superior Court case no. BC490221 ("the Lawsuit"), to which ASCIC is not a party;

WHEREAS, LA County and ASCIC desire to resolve their disputes in connection with: the RLA bonds; the Olive View bonds; any and all bonds that may have been issued by ASCIC in connection with the RLA Project, the Olive View Project or the Pitchess Cogen Project; the Takeover Agreement; the RLA Project; the Olive View Project; the Pitchess Cogen Project; and any actual or potential legal claims that LA County and ASCIC may have against each other in connection with the aforementioned bonds, projects or Takeover Agreement without admitting any fault or liability pursuant to the terms and conditions set forth in this Agreement. LA County and ASCIC, without admitting fault or liability, both recognize that litigation among themselves

would require substantial time, effort and expense, and agree to settle and release the actual or potential claims that they may have against each other as set forth in this Agreement. In making this Agreement, neither LA County nor ASCIC admits that the other has viable legal claims, allegations, assertions, or contentions against it.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, LA County and ASCIC agree as follows:

1 CONSIDERATION

1.1 In exchange for LA County's execution of this Agreement, ASCIC shall pay the sum of five hundred fifty thousand dollars (\$550,000) to LA County within ten (10) days after the later of the two following events: (1) the full execution of this agreement by duly authorized representatives of ASCIC and LA County; and (2) notification to counsel for ASCIC by counsel for LA County that the terms of this Agreement have been approved by the Board of Supervisors of the County of Los Angeles. The settlement payment by ASCIC shall be by a company check payable to "County of Los Angeles" and shall be delivered to counsel for LA County, David Moore of Collins, Collins, Muir & Stewart LLP, 1100 El Centro Street, South Pasadena, CA 91030.

2 RELEASE OF CLAIMS

2.1 The term the "ASCIC Released Parties" means and shall include ASCIC and its predecessors, successors, assigns, affiliates, attorneys, insurers or reinsurers and liability carriers, accountants, agents, servants, representatives, employees and former employees. However, notwithstanding the foregoing, the term "ASCIC Released Parties" specifically does not include SR&B Boilers or any of its predecessors, successors, assigns (excluding ASCIC), affiliates, attorneys, representatives, employees, principals or former employees.

2.2 The term the "LA County Released Parties" means and shall include the County of Los Angeles, and each of its past, present and future officers, members of the Board of Supervisors, Special Districts, elected and appointed officers, managers, employees, representatives, agents, attorneys, administrators, departments, divisions, agencies, subsidiaries (whether or not wholly owned), predecessors and assigns. Notwithstanding the foregoing, the term "LA County Released Parties" specifically does not include SR&B Boilers or any of its predecessors, successors, assigns, affiliates, attorneys, representatives, employees, principals or former employees.

2.3 The term "Claims" means and shall include without limitation any and all claims, actions, and causes of action, liens, debts, liabilities, demands, obligations, contracts or commitments, suits, debts, accounts, covenants, disputes, controversies, agreements, stock options agreements, promises, acts, costs and expenses (including without limitation attorneys' fees), damages, and executions, of whatever kind or nature, including without limitation any statutory, civil, common law or administrative claim; claims for attorneys' fees, costs, expenses

and expert witness expenses, whether express, implied in law or fact, oral or written, whether known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, at law or in equity, which LA County or ASCIC ever had or held, now have or hold, or hereafter can, shall, or may have or hold at any time in the future, with respect to the following matters or items only: the RLA bonds; the Olive View bonds; any and all bonds that may have been issued by ASCIC in connection with the RLA Project, the Olive View Project or the Pitchess Cogen Project; the Takeover Agreement; the RLA Project; the Olive View Project; and the Pitchess Cogen Project. The term "Claims" specifically excludes any actual or potential claims or causes of action that ASCIC and/or LA County may have against SR&B Boilers or its principals or employees, including (but not limited to) the allegations, claims and assertions made by LA County against SR&B Boilers in the Lawsuit.

2.4 In consideration of the terms and provisions of this Agreement, LA County shall and does hereby and forever fully, finally and forever generally remise, release, waive and discharge the ASCIC Released Parties, and each of them, from any and all known or unknown, suspected or unsuspected, whether or not concealed or hidden, claims, rights, actions and causes of action, at law or in equity, relating to the Claims, which LA County ever had or held, now has or holds, or hereafter can, shall, or may have or hold against the ASCIC Released Parties, or any one of them, based on any occurrences, transactions, events, acts, or omissions of any kind whatsoever from the beginning of time up through and including the Effective Date of this Agreement. Likewise, in consideration of the terms and provisions of this Agreement, ASCIC shall and does hereby and forever fully, finally and forever generally remise, release, waive and discharge the LA County Released Parties from any and all known or unknown, suspected or unsuspected, whether or not concealed or hidden, claims, rights, actions and causes of action, at law or in equity, relating to the Claims, which ASCIC ever had or held, now has or holds, or hereafter can, shall, or may have or hold against the LA County Released Parties, based on any occurrences, transactions, events, acts, or omissions of any kind whatsoever from the beginning of time up through and including the Effective Date of this Agreement.

2.5 Nothing in this Agreement is meant by the Parties to release their respective rights against SR&B Boilers or any of its predecessors, successors, assigns (excluding ASCIC), affiliates, attorneys, representatives, employees, principals or former employees.

3 WAIVER OF SECTION 1542 RIGHTS

LA County and ASCIC each acknowledge that they have been informed of and understand the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

LA County and ASCIC each expressly waive and relinquish any and all rights and benefits under Section 1542 of the Civil Code of the State of California and under any statute, rule, or principle of common law or equity, of any jurisdiction, that is similar to Section 1542.

4 CLAIMS OR OTHER CHARGES

4.1 LA County represents and warrants that, with respect to the Claims released herein and the subject matter of the Agreement, it has no lawsuits, legal actions or other claims pending against any one of the ASCIC Released Parties, and that it will not file, and will not engage anyone on its behalf to file, any civil claim, civil action or civil complaint against any one of the ASCIC Released Parties in connection with the Claims. ASCIC represents and warrants that, with respect to the Claims released herein and the subject matter of the Agreement, it has no lawsuits, legal actions or other claims pending against any one of the LA County Released Parties, and that it will not file, and will not engage anyone on its behalf to file, any civil claim, civil action or civil complaint against any one of the LA County Released Parties in connection with the Claims .

4.2 LA County and ASCIC each represent and warrant that there has been no assignment or transfer of any Claims, or portion thereof, to any other person.

5 NO ADMISSION OF LIABILITY

LA County and ASCIC each expressly acknowledges and agrees that this Agreement represents a settlement of disputed rights and claims and that, by entering into this Agreement, the ASCIC Released Parties and the LA County Released Parties do not admit or acknowledge the existence of any liability or wrongdoing, all such liability or wrongdoing being specifically and expressly denied.

6 COMPLETE AGREEMENT

This Agreement constitutes an integrated written contract expressing the entire agreement of LA County and ASCIC. All prior and contemporaneous discussions, negotiations and writings, have been and are merged with and integrated into, and are superseded by, this Agreement. No representations, promises, agreements or understandings, written or oral, not contained herein shall be of any force or effect. The Agreement cannot be modified except by a writing executed by the parties hereto expressly modifying this Agreement.

7 SEVERABILITY

If any provision (or portion thereof) of this Agreement is declared by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remaining provisions (including other portions of a provision having an invalid portion) shall remain in full force and effect and, to the extent possible, the disputed provision shall be construed so that it may be valid and enforceable.

8 WAIVER

No failure or delay in exercising any right, power or privilege in respect of this Agreement shall act as a waiver to a later demand for full and complete performance.

9 GOVERNING LAW

Construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of California, without regard to the rules or principles of conflicts or choice of law that might look to any jurisdiction outside of California.

10 MISCELLANEOUS TERMS

LA County and ASCIC each represent, warrant and agree as follows:

10.1 Each of them has received, or has been given the opportunity to receive, prior independent legal advice from legal counsel of their choice with respect to the advisability of entering into this Agreement, and has been provided a reasonable time within which to consider signing this Agreement.

10.2 Each of them was provided the opportunity to be assisted by their attorneys in reviewing and agreeing to the terms hereof, and no ambiguity shall be resolved against any party by virtue of having participated in the drafting of this Agreement.

10.3 Each of them represents that each has read this Agreement carefully, knows and understands its contents, and has investigated the facts pertaining to this Agreement to the extent that each deems necessary or desirable.

10.4 Except as set forth in section 10.7 below, each of them shall bear their own attorneys' fees, costs, and expenses incurred with respect to the Claims, this Agreement, and the subject matter of this Agreement.

10.5 This Agreement may be executed in counter-parts, e-mail and facsimile signatures shall be accepted as if they were originals, and there shall be a duplicate original provided for each signatory party.

10.6 This Agreement and the terms herein are subject to final approval by the Board of Supervisors for the County of Los Angeles, and that absent such final approval, this Agreement is not final or effective, and the settlement and releases reflected herein are not effective or binding. ASCIC specifically acknowledges and agrees that this Agreement (and the terms and conditions herein) are contingent upon approval by the Board of Supervisors, and that it has been informed of the need for approval by the Board of Supervisors of this Agreement and the terms therein in order for this Agreement and the terms therein to be operable and effective.

10.7 In the event that any legal action or motion is filed or instituted to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs against the other party. The parties acknowledge and agree that any legal action filed to enforce the terms of this Agreement shall be subject to the laws and jurisdiction of the State of California, and that venue of any such legal action shall be in the Superior Court for the County of Los Angeles. The appropriateness of the aforementioned jurisdiction and venue are hereby acknowledged by both LA County and ASCIC.

10.8 The titles, captions or headings herein are for convenience or reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.


10.9 ASCIC warrants and represents that it did not issue or execute bonds of any kind with respect to the Pitchess Cogen Project.

10.10 The parties to this Agreement each agree that ASCIC shall remain in possession of the two industrial burners that were intended for installation as part of the RLA Project but which have been maintained by ASCIC in storage. LA County shall have the right and opportunity to inspect said burners, take photographs and take measurements of the burners and /or its components for the 30-day period from February 24, 2015 to March 26, 2015, and ASCIC shall make any necessary arrangements or accommodations to allow LA County or its representatives and agents to perform the referenced inspection, take photographs, and take measurements of the referenced burners. After March 26, 2015, ASCIC shall have the right to dispose of the burners as it sees fit. ASCIC shall bear sole responsibility for paying any past or future storage costs and fees in connection with these particular burners.

IN WITNESS WHEREOF, the parties have executed the Agreement.

Dated: June 16, 2015

COUNTY OF LOS ANGELES

By: 
PATRICE SALSEDA

Its: SENIOR DEPUTY COUNTY COUNSEL

Dated: June __, 2015

AMERICAN SAFETY CASUALTY INSURANCE COMPANY

By: _____

Its: _____

10.7 In the event that any legal action or motion is filed or instituted to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs against the other party. The parties acknowledge and agree that any legal action filed to enforce the terms of this Agreement shall be subject to the laws and jurisdiction of the State of California, and that venue of any such legal action shall be in the Superior Court for the County of Los Angeles. The appropriateness of the aforementioned jurisdiction and venue are hereby acknowledged by both LA County and ASCIC.

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IN WITNESS WHEREOF, the parties have executed the Agreement.

Dated: June __, 2015

COUNTY OF LOS ANGELES

By: _____

Its: _____

Dated: June 26, 2015

AMERICAN SAFETY CASUALTY INSURANCE COMPANY

By: Anthony M. Smith

Its: Authorized Representative

APPROVED AS TO FORM AND CONTENT:

DATED: 6/30/15

BOOTH MITCHEL & STRANGE LLP

By: 

Stacie Brandt
Attorneys for ASCIC

DATED: 7/6/15

COLLINS COLLINS-MUIR + STEWART LLP

By: 

David C. Moore
Attorneys for LA County